

State of Arizona  
Senate  
Forty-fifth Legislature  
First Regular Session  
2001

CHAPTER 64

**SENATE BILL 1468**

AN ACT

AMENDING SECTIONS 33-992, 33-992.01 AND 33-1051, ARIZONA REVISED STATUTES;  
RELATING TO MECHANICS' AND MATERIALMEN'S LIENS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 33-992, Arizona Revised Statutes, is amended to  
3 read:

4 33-992. Preference of liens over subsequent encumbrances;  
5 professional services liens

6 A. The liens provided for in this article, except as provided in  
7 subsection B of this section or unless otherwise specifically provided, are  
8 preferred to all liens, mortgages or other encumbrances upon the property  
9 attaching subsequent to the time the labor was commenced or the materials  
10 WERE commenced to be furnished except any mortgage or deed of trust that is  
11 given as security for a loan made by a construction lender as defined in  
12 section 33-992.01, subsection A, paragraph 1, if the mortgage or deed of  
13 trust is recorded within ten days after labor was commenced or the materials  
14 WERE commenced to be furnished. The liens provided for in this article  
15 except as provided in subsection B of this section are also preferred to all  
16 liens, mortgages and other encumbrances of which the lienholder had no actual  
17 or constructive notice at the time he THE LIENHOLDER commenced labor or  
18 commenced to furnish materials except any mortgage or deed of trust that is  
19 given as security for a loan made by a construction lender as defined in  
20 section 33-992.01, subsection A, paragraph 1, if the mortgage or deed of  
21 trust is recorded within ten days after labor was commenced or the materials  
22 WERE commenced to be furnished.

23 B. A notice and claim of lien for professional services shall not  
24 attach to the property for priority purposes until labor has commenced on the  
25 property or until materials have commenced to be furnished to the property  
26 so that it is apparent to any person inspecting the property that  
27 construction, alteration or repair of any building or other structure or  
28 improvement has commenced.

29 C. If no labor commences on a property or no materials are furnished  
30 to the property, a registered professional may record and foreclose on a lien  
31 at any time after the registered professional's work has commenced if the  
32 registered professional's work has added value to the property. If labor or  
33 materials are furnished to the property, the priority of the registered  
34 professional's lien is governed by subsection B of this section.

35 D. Liens for professional services shall attach not before but at the  
36 same time, and shall have the same priority, as other liens provided for in  
37 this article.

38 E. If any improvement at the site is not provided for in any contract  
39 for the construction of a ANY building or other structure, the improvement  
40 at the site is a separate work and the commencement of the improvement is not  
41 commencement of the construction of the building or other structure. The  
42 liens arising from work and labor done or professional services or materials  
43 furnished for each improvement at the site shall have a separate priority  
44 from liens arising from work and labor done or professional services or  
45 materials furnished for the construction of the building or other structure.

1 A LIEN ARISING FROM WORK OR LABOR DONE OR MATERIALS FURNISHED FOR EACH  
2 IMPROVEMENT AT THE SITE ATTACHES TO PROPERTY FOR PRIORITY PURPOSES AT THE  
3 TIME LABOR WAS COMMENCED OR MATERIALS WERE COMMENCED TO BE FURNISHED PURSUANT  
4 TO THE CONTRACT BETWEEN THE OWNER AND ORIGINAL CONTRACTOR FOR THAT  
5 IMPROVEMENT TO THE SITE. For purposes of this subsection, "improvement at  
6 the site" means any of the following on any lot or tract of land or the  
7 street, highway or sidewalk in front of or adjoining any lot or tract of  
8 land:

- 9 1. Demolition or removal of improvements, trees or other vegetation.
- 10 2. Drilling of test holes.
- 11 3. Grading, filling or otherwise improving.
- 12 4. Constructing or installing sewers or other public utilities.
- 13 5. Constructing or installing streets, highways or sidewalks.

14 Sec. 2. Section 33-992.01, Arizona Revised Statutes, is amended to  
15 read:

16 33-992.01. Preliminary twenty day notice; definitions; content;  
17 election; waiver; service; single service;  
18 contract

19 A. For the purposes of this section:

20 1. "Construction lender" means any mortgagee or beneficiary under a  
21 deed of trust lending funds with which ALL OR A PORTION OF WHICH ARE USED TO  
22 DEFRAID the cost of the construction, alteration, repair or improvement, ~~is,~~  
23 ~~wholly or in part, to be defrayed,~~ or any assignee or successor in interest  
24 of either.

25 2. "Original contractor" means any contractor who has a direct  
26 contractual relationship with the owner.

27 3. "Owner" means the person, or his THE PERSON'S successor in  
28 interest, who causes a building, structure or improvement to be constructed,  
29 altered or repaired, whether the interest or estate of the person is in fee,  
30 as vendee under a contract to purchase, as lessee, or other interest or  
31 estate less than fee. Where such AN interest or estate is held by two or  
32 more persons as community property, joint tenants or tenants in common, any  
33 one or more of the persons may be deemed the owner.

34 4. "Preliminary twenty day notice" means one or more written notices  
35 from a claimant that are given prior to the recording of a mechanic's lien  
36 and which are required to be given pursuant to this section.

37 B. Except for a person performing actual labor for wages, every person  
38 who furnishes labor, professional services, materials, machinery, fixtures  
39 or tools for which a lien otherwise may be claimed under this article shall,  
40 as a necessary prerequisite to the validity of any claim of lien, serve the  
41 owner or reputed owner, the original contractor or reputed contractor, the  
42 construction lender, if any, or reputed construction lender, if any, and the  
43 person with whom the claimant has contracted for the purchase of those items  
44 with a written preliminary twenty day notice as prescribed by this section.

1 C. The preliminary twenty day notice referred to in subsection B OF  
2 THIS SECTION shall be given not later than twenty days after the claimant has  
3 first furnished labor, professional services, materials, machinery, fixtures  
4 or tools to the jobsite and shall contain the following information:

5 1. A general description of the labor, professional services,  
6 materials, machinery, fixtures or tools furnished or to be furnished and an  
7 estimate of the total price thereof.

8 2. The name and address of the person furnishing such labor,  
9 professional services, materials, machinery, fixtures or tools.

10 3. The name of the person who contracted for the purchase of such  
11 labor, professional services, materials, machinery, fixtures or tools.

12 4. A legal description, subdivision plat, street address, location  
13 with respect to commonly known roads or other landmarks in the area or any  
14 other description of the jobsite sufficient for identification.

15 5. The following statement in bold-faced type:

16 In accordance with Arizona Revised Statutes section  
17 33-992.01, this is not a lien and this is not a reflection on  
18 the integrity of any contractor or subcontractor.

19 Notice to Property Owner

20 If bills are not paid in full for the labor, professional  
21 services, materials, machinery, fixtures or tools furnished or  
22 to be furnished, a mechanic's lien leading to the loss, through  
23 court foreclosure proceedings, of all or part of your property  
24 being improved may be placed against the property. You may wish  
25 to protect yourself against this consequence by either:

26 1. Requiring your contractor to furnish a conditional  
27 waiver and release pursuant to Arizona Revised Statutes section  
28 33-1008, subsection D, paragraphs 1 and 3 signed by the person  
29 or firm giving you this notice before you make payment to your  
30 contractor.

31 2. Requiring your contractor to furnish an unconditional  
32 waiver and release pursuant to Arizona Revised Statutes section  
33 33-1008, subsection D, paragraphs 2 and 4 signed by the person  
34 or firm giving you this notice after you make payment to your  
35 contractor.

36 3. Using any other method or device which is appropriate  
37 under the circumstances.

38 D. The preliminary notice given by any claimant shall follow  
39 substantially the following form:

40 Arizona Preliminary Twenty Day Lien Notice

41 In accordance with Arizona Revised Statutes section  
42 33-992.01, this is not a lien. This is not a reflection on the  
43 integrity of any contractor or subcontractor.

1  
2 The name and address  
3 of the owner or reputed  
4 owner is ARE:

5  
6  
7 The name and address  
8 of the original  
9 contractor is ARE:

10  
11  
12  
13 The name and address of  
14 any lender or reputed  
15 lender and/or AND assigns  
16 is ARE:

17  
18  
19 The name and address  
20 of the person with  
21 whom the claimant  
22 has contacted is ARE:

This preliminary lien notice has  
been completed by (name and address  
of claimant):

Date: \_\_\_\_\_

By: \_\_\_\_\_

Address: \_\_\_\_\_

You are hereby notified that the  
claimant has furnished or will  
furnish labor, professional  
services, materials, machinery,  
fixtures or tools of the following  
general description:

In the construction, alteration or  
repair of the building, structure  
or improvement located at:

And situated upon that certain  
lot(s) or parcel(s) of land in  
\_\_\_\_\_ County, Arizona,  
described as follows:

An estimate of the total price of  
the labor, professional services,  
materials, machinery, fixtures  
or tools furnished or to be  
furnished is \$\_\_\_\_\_

(The following statement shall be in bold-faced type.)

**Notice to Property Owner**

If bills are not paid in full for the labor, professional  
services, materials, machinery, fixtures or tools furnished, or  
to be furnished, a mechanic's lien leading to the loss, through  
court foreclosure proceedings, of all or part of your property  
being improved may be placed against the property. You may wish  
to protect yourself against this consequence by either:

1. Requiring your contractor to furnish a conditional  
waiver and release pursuant to Arizona Revised Statutes section  
33-1008, subsection D, paragraphs 1 and 3 signed by the person  
or firm giving you this notice before you make payment to your  
contractor.

2. Requiring your contractor to furnish an unconditional waiver and release pursuant to Arizona Revised Statutes section 33-1008, subsection D, paragraphs 2 and 4 signed by the person or firm giving you this notice after you make payment to your contractor.

3. Using any other method or device that is appropriate under the circumstances.

(The following language shall be in type at least as large as the largest type otherwise on the document.)

Within ten days of the receipt of this preliminary twenty day notice the owner or other interested party is required to furnish all information necessary to correct any inaccuracies in the notice pursuant to Arizona Revised Statutes section 33-992.01, subsection I or lose as a defense any inaccuracy of that information.

Within ten days of the receipt of this preliminary twenty day notice if any payment bond has been recorded in compliance with Arizona Revised Statutes section 33-1003, the owner must provide a copy of the payment bond including the name and address of the surety company and bonding agent providing the payment bond to the person who has given the preliminary twenty day notice. In the event that the owner or other interested party fails to provide the bond information within that ten day period, the claimant shall retain lien rights to the extent precluded or prejudiced from asserting a claim against the bond as a result of not timely receiving the bond information.

Dated: \_\_\_\_\_

\_\_\_\_\_  
(Company name)

By: \_\_\_\_\_

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Title)

(Acknowledgement of receipt language from Arizona Revised Statutes section 33-992.02 shall be inserted here.)

E. If labor, professional services, materials, machinery, fixtures or tools are furnished to a jobsite by a person who elects not to give a preliminary twenty day notice as provided in subsection B OF THIS SECTION, such THAT person is not precluded from giving a preliminary twenty day notice not later than twenty days after furnishing other labor, professional services, materials, machinery, fixtures or tools to the same jobsite. Such THE person, however, is entitled to claim a lien only for such labor, professional services, materials, machinery, fixtures or tools furnished within twenty days prior to the service of such THE notice and at any time thereafter.

1 F. The notice or notices required by this section may be given by  
2 mailing the notice by first class mail sent with a certificate of mailing,  
3 registered or certified mail, postage prepaid in all cases, addressed to the  
4 person to whom notice is to be given at his THE PERSON'S residence or  
5 business address. Service is complete at the time of the deposit of such  
6 NOTICE IN THE mail.

7 G. A person required by this section to give notice to the owner, to  
8 an original contractor, to the construction lender, if any, and to the person  
9 with whom the claimant has contracted need give only one such notice to the  
10 owner, to the original contractor, to the construction lender, if any, and  
11 to the person with whom the claimant has contracted with respect to all  
12 labor, professional services, materials, machinery, fixtures or tools he  
13 furnishes FURNISHED for the building, structure or improvement, unless the  
14 actual estimated total price for the labor, professional services, materials,  
15 machinery, fixtures or tools furnished or to be furnished exceeds by twenty  
16 per cent or more the total price in any prior original or subsequent  
17 preliminary notice or unless the labor, professional services, materials,  
18 machinery, fixtures or tools are furnished under contracts with more than one  
19 subcontractor, in which case notice requirements shall be met for all such  
20 additional labor, professional services, materials, machinery, fixtures or  
21 tools.

22 H. If a notice contains a general description required by subsection  
23 C of this section of the labor, professional services, materials, machinery,  
24 fixtures or tools furnished up to the date of notice, it is not defective  
25 because after such THE date the person giving notice furnishes labor,  
26 professional services, materials, machinery, fixtures or tools that are not  
27 within the scope of such THE general description, or exceed by less than  
28 twenty per cent the estimated total price thereof.

29 I. Within ten days after receipt of a written request from any person  
30 or his THE PERSON'S agent intending to file a preliminary twenty day notice,  
31 which request shall identify the person, his THE PERSON'S address, the job  
32 site JOBSITE and the general nature of the person's labor, professional  
33 services, materials, machinery or tools to which the preliminary twenty day  
34 notice shall apply, or within ten days of the receipt of a preliminary twenty  
35 day notice, the owner or other interested party shall furnish such THE person  
36 a written statement containing the following information:

37 1. The legal description, subdivision plat, street address, OR  
38 location with respect to commonly known roads or other landmarks in the area,  
39 or any other description of the job-site JOBSITE sufficient for  
40 identification.

41 2. The name and address of the owner or reputed owner.

42 3. The name and address of the original contractor or reputed  
43 contractor.

44 4. The name and address of the construction lender, if any, or reputed  
45 construction lender.

1           5. If any payment bond has been recorded pursuant to section 33-1003,  
2 a copy of the bond and the name and address of the surety company and bonding  
3 agent, if any, providing the payment bond.

4           J. Failure of the owner or other interested party to furnish the  
5 information required by this section does not excuse any claimant from timely  
6 giving a preliminary twenty day notice, but it does stop the owner from  
7 raising as a defense any inaccuracy of such THE information in a preliminary  
8 twenty day notice, provided the claimant's preliminary twenty day notice of  
9 lien otherwise complies with the provisions of this chapter. If the  
10 information is received by the claimant after the claimant has given a  
11 preliminary ~~twenty-day~~ TWENTY DAY notice and the information contained in the  
12 preliminary ~~twenty-day~~ TWENTY DAY notice is inaccurate, the claimant shall,  
13 within thirty days of the receipt of this information, give an amended  
14 preliminary twenty day notice in the manner provided in this section. ~~SUCH~~  
15 AN amended preliminary twenty day notice shall be considered as having been  
16 given at the same time as the original preliminary twenty day notice, except  
17 that the amended preliminary twenty day notice shall be effective only as to  
18 work performed, materials supplied or professional services rendered twenty  
19 days prior to the date of the amended preliminary twenty day notice or the  
20 date the original preliminary twenty day notice was given to the owner,  
21 whichever occurs first. If a payment bond has been recorded in compliance  
22 with section 33-1003 and the owner or other interested party fails to furnish  
23 a copy of the bond and the other information as required by this section, the  
24 claimant shall retain lien rights to the extent precluded or prejudiced from  
25 asserting a claim against the bond as a direct result of not timely receiving  
26 a copy of the bond and the other information from the owner or other  
27 interested party.

28           Sec. 3. Section 33-1051, Arizona Revised Statutes, is amended to read:  
29           33-1051. Definitions

30           In this article, unless the context otherwise requires:

31           1. "Bonded stop notice" means a stop notice that is given to any  
32 construction lender and that is accompanied by a bond executed solely by one  
33 or more surety companies authorized to transact surety business in this state  
34 pursuant to title 20, chapter 2, article 1 in the penal sum equal to one  
35 hundred twenty-five per cent of the amount of the claim on the condition that  
36 if the owner, original contractor or construction lender recovers judgment  
37 in an action brought on a verified claim or on the lien filed by the  
38 claimant, the claimant would have sufficient monies to pay all costs and  
39 damages that the owner, original contractor or construction lender may  
40 sustain by reason of the stop notice claim or the lien, not exceeding the  
41 amount specified in the bond.

42           2. "Construction lender" means any mortgagee or beneficiary under a  
43 deed of trust lending monies ~~with which the cost of the FUNDS ALL OR A~~  
44 ~~PORTION OF WHICH DEFRAID THE COST OF THE~~ construction, alteration, repair or  
45 improvement is to be defrayed wholly or in part, or any assignee or successor



1 in interest of either, or any escrow holder or other party holding any monies  
2 furnished or to be furnished by the owner or any other person as a source  
3 from which to pay construction costs.

4 3. "Original contractor" means any contractor who has a direct  
5 contractual relationship with the owner.

6 4. "Stop notice" means a written notice that is signed and verified  
7 by the claimant or its agent and that states in general terms all of the  
8 following:

9 (a) A description of the labor, professional services, materials,  
10 machinery, fixtures or tools furnished or agreed to be furnished by the  
11 claimant.

12 (b) The name of the person to or for whom the labor, professional  
13 services, materials, machinery, fixtures or tools were furnished or agreed  
14 to be furnished.

15 (c) The amount in value of the labor, professional services,  
16 materials, machinery, fixtures or tools already furnished and the total  
17 amount agreed to be furnished.

18 (d) The amount, if any, of payment received by the claimant for the  
19 labor, professional services, materials, machinery, fixtures or tools  
20 furnished or agreed to be furnished.

21 (e) The name and address of the claimant.

APPROVED BY THE GOVERNOR APRIL 6, 2001.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 6, 2001.

*Norman L. Moore*  
Chief Clerk of the House

*Chaemin Bellington*  
Secretary of the Senate

Secretary to the Governor

**Governor of Arizona**

**S.B. 1468**


Secretary of State

SENATE CONCURS IN HOUSE  
AMENDMENTS AND FINAL PASSAGE

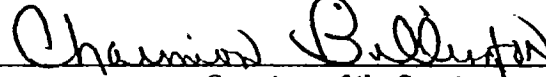
Passed the Senate April 3, 20 01,

by the following vote: 29 Ayes,

0 Nays, 1 Not Voting



President of the Senate



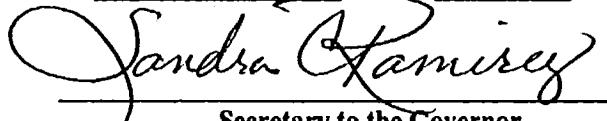
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF GOVERNOR

This Bill was received by the Governor this

3 day of April, 20 01,

at 12:35 o'clock P M.

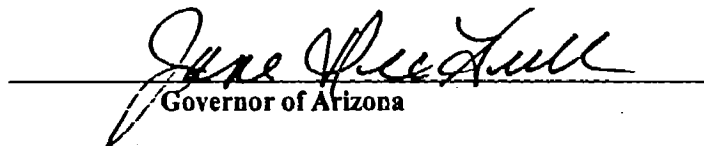


Secretary to the Governor

APPROVED THIS 6<sup>th</sup> day of

April, 20 01,

at 11:03 o'clock A M.



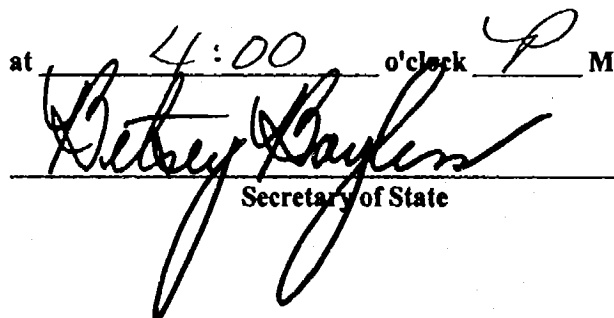
Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this 6 day of April, 20 01,

at 4:00 o'clock P M.



Secretary of State

S.B. 1468